

<b>DALE SAEGER</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 214,731
<b>TRUCK TRANSPORT, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>NATIONAL UNION FIRE INSURANCE</b>	)	
Insurance Carrier	)	

The preliminary hearing Order entered by the Administrative Law Judge should be affirmed. The Appeals Board agrees with, and therefore adopts, the Administrative Law Judge's conclusion that claimant has failed to establish he was respondent's employee on

the date of the accident. In reaching that conclusion, the Appeals Board has considered the following facts:

- (1) In its paperwork which claimant completed, respondent was very careful to describe claimant as an independent contractor rather than an employee.
- (2) Claimant was responsible for the maintenance and repair, as well as all other costs of operation, of the tractor he and his fiancée were leasing to respondent.
- (3) Claimant was paid by the load, and under the terms of the lease agreement could refuse the loads respondent offered.
- (4) Claimant was free to determine the route he took to deliver respondent's loads. Respondent only required the loads be timely delivered.
- (5) Claimant and his fiancée operated the truck as a partnership as reflected in their tax documents.

The facts of this proceeding appear readily distinguishable from Knoble v. National Carriers, Inc., 212 Kan. 331, 510 P. 2d 1274 (1973), where an owner-operator was found to be an employee. In that case, the court said,

"It is often difficult to determine in a given case whether a person is an employee or an independent contractor since there are elements pertaining to both relations which may occur without being determinative of the relationship. In other words, there is no exact formula which may be used in determining if one is an employee or an independent contractor. The determination of the relation in each instance depends upon the individual circumstances of the particular case.

"*The primary test* used by the courts in determining whether an employer-employee relationship exists is *whether the employer has the right of control* and supervision over the work of the alleged employee, and the right to direct the manner in which the work is to be performed, as well as the result which is to be accomplished. It is not the actual interference or exercise of control by the employer, but the existence of the right or authority to interfere or control, which renders one a servant rather than an independent contractor." Jones v. City of Dodge City, 194 Kan. 777, 778-779, 402 P. 2d 108 (1965).

Unlike the Knoble case, claimant has failed to introduce such evidence that indicates respondent either exercised, or had the right to exercise, such control over

claimant to create the relationship of employer-employee. In Knoble, National Carriers required Mr. Knoble to repeatedly call the dispatcher for instructions regarding such matters as loading, unloading, return loads, and arrival times. Mr. Knoble had no control over the commodity, its destination, or its arrival time, and had no authority to contract with other shippers on his own. When home, Mr. Knoble had to call National's dispatcher twice daily and was subject to a fine if he failed. Another distinguishing fact is that Mr. Knoble was required to furnish his own services as a driver or those of an acceptable substitute. Although similar evidence may emerge in this proceeding before the case is fully submitted, such evidence of control has not been presented to date.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated December 4, 1996, entered by Administrative Law Judge Floyd V. Palmer should be, and hereby is, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 1997.

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BOARD MEMBER

c: Roger D. Fincher, Topeka, KS  
D'Ambra M. Howard, Overland Park, KS  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director